

Appl. No. 09/559,704
Response to April 5, 2004 Office Action

RESPONSE TO REJECTIONS UNDER 35 U.S.C. §§ 102 AND 103:

Stone and Stokes

Claims 1-3, 11-16, 25-29, and 34 were rejected under 35 U.S.C. § 102(b) as being anticipated by *Stone*. Claims 4-7 and 30-33 were rejected under 35 U.S.C. § 103(a) as being unpatentable over *Stone* in view of *Stokes*. All rejections of the claims based on the *Stone* reference are improper and should be removed as moot. Specifically, *Stone* cannot anticipate all elements of the claims. The Examiner's Response to Arguments section of the Official Action specifies that: "Stone teaches reinforcing substantially all of panel portion 58." However, *Stone*, and particularly panel portion 58 (See Fig. 3), fails to disclose a ribbon of reinforcing material that is "adhered" to substantially all of a selected panel portion of the web" as specified in independent claims 1 and 25. Panel portion 58 in Fig. 3 of *Stone* becomes the depending peripheral lips of the openable lid when the *Stone* carton is erected as shown in Fig. 4. If the strip 24 were "adhered" to this panel, the lid would not open.

In *Stone*, a ribbon 38 is press-bonded to a portion of carton material 42. *Stone* specifies in column 3, line 66 through column 4, line 2 that to "permit the lid 30 to be raised upwardly from the base section 32 while the collar 24 is retained on the base section 32 (FIG. 4), the collar 24 is adhered to the carton 10 only at locations below the tear strip 27." *Stone* continues in column 5, lines 3-5 by specifying that "the strip 38 of collar material is simultaneously cut and scored to produce a collar blank 46 which is also illustrated in FIG. 3. The collar blank 46 is fixedly adhered to the carton blank 44 at locations to the right of the tear-tape band 26 and the tear strip 27 (as viewed in FIG. 3)." Panel portion 58 is at the left of tear-tape band 26 and tear strip 27 in Fig. 3. Thus, since panel portion 58 forms part of the carton flip-top and cannot be

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adhered to the portion of the collar it overlies since the carton would not function to open, *Stone* cannot meet the limitations of independent claims 1 and 25, which include a ribbon of reinforcing material "being positioned to overlie and adhere to substantially all of a selected panel portion."

As obvious in reviewing Figs. 1, 3, and 4, panel portion 58 is not adhered to ribbon 38, since if panel portion 58 was adhered to ribbon 38, the box of *Stone* would not open. *Stone* is concerned with making a flip-top carton and, if panel portion 58 were adhered to ribbon 38, the constructed carton would not allow the top of the carton to flip-open, which would defeat the purpose of *Stone*. Since *Stone* does not disclose the reinforcing ribbon that overlies substantially all of, and adheres to, a selected panel portion, and, since amending *Stone* to have panel portion 58 adhered to ribbon 38 would destroy the intent of the reference, rejections based upon *Stone* should be removed as improper. Additionally, the rejections based upon a combination of *Stone* and *Stokes* should be removed since *Stokes* fails to make up for the inadequacies of *Stone*, as it fails to teach or suggest the claimed ribbon of reinforcing material that overlies and adheres to substantially all of a selected panel portion. Further, there is no motivation to make such a combination since doing so would destroy the functionality of *Stokes* as discussed above.

Lang

Claims 1, 3-5, 7, 9-11, 16, 25, 29-32, and 34 were rejected under 35 U.S.C. § 102(b) as being anticipated by *Lang*. *Lang* discloses a method of applying a finishing layer in a corrugated line. Corrugation inherently involves multiple layers of paperboard, at least one of which being corrugated. Independent claims 1 and 25 specify that the methods therein apply only to non-

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corrugated materials. The rejections based on *Lang* are improper since *Lang* fails to disclose application to non-corrugated paperboard.

In order to anticipate claims under 35 U.S.C. § 102, a reference must disclose each element of a claimed invention. *Lang* fails to meet this standard. Specifically, *Lang* fails to teach the lamination of a ribbon of reinforcing material directly to another web of non-corrugated material over substantially all of a panel portion. *Lang* teaches applying a "finish layer" onto a corrugated material, with the majority of its disclosure detailing application of the finish layer to a "double backing layer" of a corrugated material. The double backing layer is the side of the corrugated material that will become the outside of a box. Although *Lang* mentions the possibility of applying the finish later directly to the corrugated core to form both the finish layer and the double backing layer, *Lang* labels this method inferior and teaches against its use. Regardless, the finish layer in *Lang* is not applied to a non-corrugated web of paperboard as claimed in the present application.

Lang fails to disclose, teach, or suggest applications to non-corrugated paperboard. The driving purpose of the present invention is to produce a paperboard carton that is not corrugated. Its specific purpose is to replace corrugated paperboard in certain cartons where corrugated is not practical or viable. In order to do this, certain panel portions of the carton blank must be enhanced in strength beyond their inherent strength. Because *Lang* teaches standard corrugated paperboard, the finish layer therein does not need to be reinforcing, is not applied for this purpose, and does not teach such strength enhancement. The present invention is concerned with providing an alternative to corrugation, which typically is much more costly to produce. Corrugated products suffer from many other disadvantages, including being more expensive to

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ship, since the greater thickness of corrugated materials limits the number of blanks able to be stacked on pallets. Corrugated materials also require specialized machinery to convert the corrugated blanks to cartons and lack the capability of printing high quality graphics thereon. The success in the industry of products formed by the presently claimed method is yet another indication that the present invention is a patentable advance over corrugated products, such as the one detailed in *Lang*. Thus, the rejections under 35 U.S.C. § 102 based on the *Lang* reference should be removed as moot since *Lang* fails to disclose each and every claimed element of independent claims 1 and 25.

Further, any future rejection under 35 U.S.C. § 103 based on *Lang* would be improper since *Lang* fails to disclose a teaching or suggestion to modify the disclosure therein to apply to non-corrugated materials. The commercial success of the present invention supports this conclusion. Specifically, *Lang* is concerned with cost savings and details use of his invention to schedule orders and minimize scrap. Corrugated materials inherently cost more than non-corrugated materials since corrugation requires multiple layers--typically including layers attached above and below the corrugated piece. The present invention provides improvements over the use of corrugated materials in cost savings, shipping cost savings, specialized machinery capable of handling the bulk of corrugated materials, and graphics quality printable thereon. Accordingly, *Lang* fails to teach or suggest applications to non-corrugated materials and rejections based thereupon should be removed.

The present invention has shown substantial commercial success as detailed in the Declaration Under 37 CFR 1.132 of Steve McLary as filed with the Preliminary Amendment accompanying the RCE filed March 15, 2004. The Declaration of Steve McLary detailed

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substantial sales of the present product in the industry. The methods of *Lang* are at least two steps removed from the present application, with micro-flute being a not completely successful attempt to address the drawbacks of using the corrugated materials of *Lang*. These other products have been introduced in place of corrugation to improve strength while reducing costs. The very fact that micro-flute was developed as an alternative to corrugation is an attempt by others to solve the problems addressed by the method of the present invention in an inferior way. Certain segments of the packaging industry (e.g. drink cartons) are not suitable for corrugated boxes or even micro-flute, but nevertheless require high strength containers that can be stacked. Although micro-flute was an attempted solution to corrugation, it is more expensive, heavier, and not compatible with packaging machinery. The method of the present invention produces a non-corrugated container that is compatible with current packaging machinery, that is much less expensive than micro-flute or corrugation, and that is substantially stronger than single sheet paperboard cartons to enhance stackability.

CONCLUSION

Claims 1-7, 9-16, and 25-34 are thus allowable as written and an early notice to such effect is earnestly solicited. Should the Examiner have any questions or comments regarding the foregoing Response, he is invited and urged to telephone the undersigned attorney.

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AUTHORIZATION

The Commissioner is hereby authorized to charge any additional fees that may be required for the timely consideration of this Amendment under 37 C.F.R. §§ 1.16 and 1.17, or credit any overpayment to Deposit Account No. 09-0528.

7/1/04
Date

Respectfully Submitted,

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